

Notice of Allowability

Application No.

10/671,591

Examiner

Daniel S. Metzmaier

Applicant(s)

KOIKE ET AL.

Art Unit

1796

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment file 8/7/2008 and the Interview of 8/14/2008.
2. ☒ The allowed claim(s) is/are 1-3,6-11,14-16,20 and 23-26.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 8/14/2008.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

EXAMINER'S AMENDMENT

Claims 1-3, 6-11, 14-16, 20 and 23-26 are allowed.

1. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 14 August 2008, Richard L. Chinn requested an extension of time for 1 (one) MONTH and authorized the Director to charge Deposit Account No. 15-0030 the required fee of \$120 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Replace all previous claim list with the claim list set forth beginning on page 3 of this examiner's amendment, thereby amending claims 8-11 and 16.

Begin amendment to the claims

Claim 1 (previously presented): A foamed composition obtained by foaming an oil-in- water type emulsion comprising the following (A), (B) and (C):

(A) from 7 to 35% by weight of an oil phase consisting of fat or oil consisting of from 1 to 69.9% by weight of triglycerides, from 0.1 to 9% by weight of monoglycerides and from 30 to 90% by weight of diglycerides, and optionally a vegetable sterol and optionally an antioxidant wherein 80% by weight or more of the fatty acids in the diglycerides are unsaturated fatty acids, wherein 0 to 20% by weight of the fatty acids in the fat or oil are saturated fatty acids, and wherein less than 10% by weight of the fatty acids in the fat or oil are trans acids;

(B) from 65 to 93% by weight of a water phase, wherein the water phase comprises from 15 to 60% by weight of sugars, sugar alcohols, and mixtures thereof;
and

(C) an emulsifier having an HLB of 8 or more
wherein the volume-average particle diameter of said oil-in-water type emulsion is from 0.9 μm or less and
wherein said composition has a specific gravity of from 0.1 to 0.9 g/cm^3 .

Claim 2 (previously presented): The foamed composition according to Claim 1, wherein said emulsifier is present in an amount of from 0.1 to 5 parts by weight based on 100 parts by weight of the emulsion.

Claim 3 (previously presented): The foamed composition according to Claim 1 or 2, the emulsion further comprising a protein in an amount of from 0.1 to 10 parts by weight based on 100 parts by weight of the emulsion.

Claims 4-5 (canceled).

Claim 6 (previously presented): A method of producing the foamed composition according to Claim 1, the method comprising performing a high-pressure emulsifying treatment under a pressure of from 78.5 to 490 MPa.

Claim 7 (previously presented): The foamed composition according to claim 1, wherein 90 to 100% of said unsaturated fatty acids have 10 to 24 carbon atoms.

Claim 8 (currently amended): The foamed composition according to claim 1, wherein fatty acids ~~comprising of~~ said diglyceride ~~comprises~~ are 20-65% of oleic acid.

Claim 9 (currently amended): The foamed composition according to claim 1, wherein fatty acids ~~comprising of~~ said diglyceride ~~comprises~~ are 15-65% of linoleic acid.

Claim 10 (currently amended): The foamed composition according to claim 1, wherein fatty acids ~~comprising of~~ said diglyceride ~~comprises~~ are less than 15% of linolenic acid.

Claim 11 (currently amended): The foamed composition according to claim 1, wherein said diglyceride ~~comprises~~ has at least 50% of 1,3-diglycerides.

Claim 12-13 (canceled).

Claim 14 (previously presented): The foamed composition according to claim 1, wherein said sugars, sugar alcohol, and mixtures thereof is at least one selected from the group consisting of glucose, fructose, maltose, sucrose, lactose, sucralose, sorbitol, maltitol, erythritol, xylitol, trehalose, reduced starch saccharides, isomerized sugars and starch syrups.

Claim 15 (previously presented): The foamed composition according to claim 1, wherein the emulsion has a specific gravity of from 0.3 to 0.7 g/cm³.

Claim 16 (currently amended): The foamed composition according to claim 1, wherein all the constituent fatty acids ~~include~~ have 0.1 to 5 wt. % of trans acids.

Claims 17-19 (canceled).

Claim 20 (previously presented): The foamed composition according to claim 1, further consisting of 0.05 to 4.7 parts by weight of vegetable sterol to 100 parts by weight of the fat or oil.

Claims 21-22 (canceled).

Claim 23 (previously presented): The foamed composition according to claim 1, wherein the volume-average particle size is 0.05 gm to 0.3 gm.

Claim 24 (previously presented) The foamed composition according to claim 1, wherein a ratio by weight of said fat or oil to said emulsifier is 25/1 to 5/1.

Claim 25 (previously presented) The foamed composition according to claim 1, wherein a ratio by weight of said fat or oil to said emulsifier is 20/1 to 5/1.

Claim 26 (previously presented) The foamed composition according to claim 1, wherein a ratio by weight of said fat or oil to said emulsifier is 18/1 to 5/1.

End amendment to the claims

Reasons for allowance

2. The following is an examiner's statement of reasons for allowance: See paragraph number 9 of the Office Action mailed 07 May 2008. The claimed foamed compositions are not disclosed or fairly suggested in the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Daniel S. Metzmaier/
Primary Examiner, Art Unit 1796**

DSM